S. HRG. 99-790

NOMINATION OF WILLIAM F. NELSON

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

NOMINATION OF WILLIAM F. NELSON TO BE CHIEF COUNSEL OF THE INTERNAL REVENUE SERVICE

JULY 22, 1986

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NOMINATION OF WILLIAM F. NELSON TO BE CHIEF COUNSEL OF THE INTERNAL REVENUE SERVICE

TUESDAY, JULY 22, 1986

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee was convened, pursuant to notice, at 1:50 p.m. in room SD-215, Dirksen Senate Office Building, the Honorable Bob Packwood (chairman) presiding.

Present: Senator Packwood.

[The press release announcing the hearing statement of Senator Mack Mattingly and a biographical sketch of William F. Nelson follows:]

[Press Release]

FINANCE COMMITTEE TO REVIEW NELSON NOMINATION

Senator Bob Packwood announced today that the Senate Committee on Finance will hold a hearing on July 22, 1986, to review the nomination of William F. Nelson to be Chief Counsel of the Internal Revenue Service. The hearing is scheduled to begin at 1:45 p.m. in Room SD-215 of the Dirksen Senate Office Building.

Since 1972, Mr. Nelson has been with the law firm of King & Spaulding in Atlanta, Georgia, becoming a partner in 1978. Mr. Nelson was born in Jackson, Mississippi, and currently resides in Atlanta, Georgia.

Mr. Nelson received his bachelors degree from Mississippi State University in 1969 and his JD from the University of Virginia in 1972.

STATEMENT OF HON. MACK MATTINGLY

I am pleased that the President has nominated one of my constituents, William Nelson, to the post of Chief Counsel to the Internal Revenue Service. You have a copy of his résumé, so you already know how difficult it would be to find a person who is more qualified for the job. Will is from Atlanta where he is a partner at King & Spalding, one of Georgia's leading law firms. Will has been elected by his partners as a member of King & Spalding's Policy Committee which is responsible for firm policy and management. Will's academic credentials are impeccable. He is one of the country's best known, and most respected writers and commentators on tax subjects. And, he has broad practical experience in all phases of the tax practice, including litigation.

Will's reputation and credibility among tax professionals, not just in Washington, but nationwide, is already established. The IRS and Treasury will benefit from their association with him.

On the matter of tax reform, I know that Will has long been a public advocate of the principles that are the foundation of the movement. He understands first hand (probably better than we do) the distortions that result from a narrowly based, high rate system. He will work to see that responsible reform becomes a reality, and after the reform becomes reality he will be around to oversee its orderly implementation.

I am pleased to offer Will my unqualified support and endorsement.

Response to Senate Finance Committee Questionnaire

From: William F. Nelson

Position: Chief Counsel (IRS)

Part A.

1. Name: William Francis Nelson

2. Address: 6155 River Chase Circle
Atlanta, GA 30328

3. Date and place of birth: May 2, 1947
Jackson, Mississippi

4. Marital status: Married for seventeen years to Patricia Lynne Faulkner Nelson ("Lynne")

5. Children: Grant Faulkner Nelson (age 13)
Adam McCright Nelson (age 10)
Sarah Kate Nelson (age 6)

6. Education:

Mississippi State University, B.S., 1965-69
University of Virginia, J.D., 1969-72

7. Employment record:

Summer of 1969: Admissions counselor
Mississippi State University,
Starkville, Mississippi

Summer of 1970: Life guard
Farmington Country Club
Charlottesville, Virginia

Summer of 1971: Law clerk
King & Spalding
Atlanta, Georgia

May 1972 to July 1978:
Associate lawyer
King & Spalding

July 1978 to present:
Partner
King & Spalding

8. Government experience: None.

9. Memberships: American Bar Association
ABA Tax Section (former subcomm. chair)
State Bar of Georgia
River Chase Homeowners Association (board member)
University of Virginia Alumni
Mississippi State Alumni
High Museum of Art
Atlanta Botanical Society
Atlanta Symphony support organization
Omicron Delta Kappa (U.Va. and Miss. State)
Blue Key (Miss. State)
Pi Kappa Phi (Miss. State)
Phi Eta Sigma (Miss. State)
Sigma Chi (Miss. State., Secretary)
PAD (U.Va.)
Order of the Coif (U.Va.)
Raven Society (U.Va)
M Club (Miss. State, Pres.)
Beta Gamma Sigma (Miss. State)
Virginia Law Review, Editor-in-chief
Virginia Tax Review, Advisory board
Journal of Partnership Taxation, Advisory board
Northside Drive Baptist Church

10. Political affiliations:

a. Republican; no other memberships, offices or affiliations with political organizations

b. Contributions: I have no records of political contributions prior to 1980. Since 1980, I have given $100 or more to the following: Georgia Republican Party; National Republican Senatorial Committee; Sen. Mack Mattingly election committees; Cong. Pat Swindall election committees; Cong. Wyche Fowler election committees (House elections only); Bo Ginn gubernatorial committee; Joe Frank Harris gubernatorial committee. In addition, since 1980 I have made several contributions of lesser amounts to

local candidates, including for Susan Little (school board); Dorothy Felton (state rep); Billy Lee Evans (1982 Cong. campaign); and Elliott Levitas (1982 Cong. campaign). Finally, my law firm has made numerous contributions to numerous political and campaign committees of both major parties. My share of these contributions is generally relatively small (less than $25). As noted, I do not have records of contributions prior to 1980; however, I do recall making several contributions to election committees involved in local races. I believe that all of these pre-1980 contributions were less than $100 and generally were less than $50.

11. Honors and awards:

Athletic scholarship -- Miss. State
NCAA Post-graduate scholarship
Phi Eta Sigma (scholarship -- Miss. State)
Pi Kappa Phi (scholarship -- Miss. State)
Graduated Miss. State with highest honors
Beta Gamma Sigma Award for number one student in Coll. of Business
President Miss State M Club (athletic)
Secretary: Miss. State Coll. of Business
ODK
Blue Key
Raven Society (U.Va. honorary)
Editor-in-chief, Virginia Law Review
Order of the Coif

12. Published writings:

W.McKEE, W.NELSON & R.WHITMIRE, FEDERAL TAXATION OF PARTNERSHIPS AND PARTNERS, Warren, Gorham & Lamont (1977).

Nelson, "The Partnership Capital Freeze: A Precis," 15 Real Property, Probate and Trust Journal 99 (1980).

McKee, Nelson and Whitmire, "Tax Reform Act of 1984: Provisions Affecting the Taxation of Partnerships and Partners," 43 NYU Inst. on Fed. Tax.(Part 2) § 28 (1985). Also published in 62 Taxes 927 (1984).

Nelson, "The Tax Classification of Partnerships: Distinguishing From Arm's Length Arrangements," 40 NYU Inst. on Fed. Tax (Part 1) § 15 (1980).

Nelson and Genz, "New Uncertainties in the Equity Freeze: The Impact of Dickman on Capital Call Rights and Other Problems," 63 Taxes 999 (1985).

McKee, Nelson and Whitmire, "The Tax Reform Act of 1976: Changes Affecting the Taxation of Partnerships and Partners," 33 Tax. L. Rev. 485 (1978).

Nelson, "The Partnership Capital Freeze: Income Estate and Gift Tax Considerations," 1 Va. Tax Rev. 11 (1981).

Nelson and Woodward, "Structuring Estate Freezes: Estate and Gift Tax Aspects," 33 USC Inst. On Fed. Tax ¶ 1300 (1981).

The CHAIRMAN. The committee will come to order, please. We are here for a hearing on the nomination of William F. Nelson to be Chief Counsel of the Internal Revenue Service. Needless to say, we regard that particular position as one of immense importance and significance.

I have read the background report on Mr. Nelson, and he sounds exemplary. Senator Mattingly is here to introduce him.

STATEMENT OF HON. MACK MATTINGLY, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator MATTINGLY. Thank you very much, Mr. Chairman.

Mr. Chairman, I am pleased that the President has nominated one of my constituents, Mr. William Nelson, to the post of Chief Counsel of the IRS. The Chair has a copy of his résumé, so you already know how difficult it would be to find a person who is more qualified for the job.

Will is from Atlanta where he is a partner at King & Spalding, one of Georgia's leading law firms. And he has been elected by his partners as a member of the King & Spalding Policy Committee which is responsible for the firm policy in management. Will's academic credentials are impeccable. He is one of the country's best known and most respected writers and commentators on tax subjects. And he has broad, practical experience in all phases of the tax practice, including litigation.

His reputation and credibility among tax professionals, not just in Washington but nationwide, is already well established. The IRS and the Treasury will benefit from their association with him.

Now, on the matter of tax reform, I know that Will has long been a public advocate of the principles and of the foundation of the movement. He understands firsthand probably better than we do the distortions that result from a narrowly based, high-rate system. He is willing to work to see that responsible reform becomes a reality. And after reform becomes a reality, he will be around to oversee its orderly implementation.

Mr. Chairman, I am very pleased to offer my unqualified support and endorsement of Mr. Nelson. And I won't even pose the question if he will support the past amendment that was approved by your wonderful tax bill.

The CHAIRMAN. What do you think, Mr. Nelson, of a sense of the Senate resolution that would say we could not change the Tax Code for 5 years?

Senator MATTINGLY. Any major policy changes.

Mr. NELSON. Oh, I would vote for that, Senator. Absolutely. [Laughter.]

Senator MATTINGLY. Not only has he got my unqualified support, but——

Mr. NELSON. That remark, Senator Mattingly, was printed in the daily tax report as a repose for 5 days instead of 5 years. [Laughter.]

Senator MATTINGLY. A lot of people wanted it to be changed to read 100 years.

Mr. NELSON. I will vote for that, too.

Senator MATTINGLY. It is good to see you. Thank you. I have another engagement, so I will have to leave.

The CHAIRMAN. Let me thank you for coming to introduce Mr. Nelson. I might say, before Mr. Nelson makes some opening comments, that the committee has reviewed of the nominee's financial disclosure materials and has received a letter from the Director of the Government Ethics Office, signifying that Mr. Nelson's compliance with the Ethics in Government Act is complete. The letter will be made part of the record.

[The letter from the Office of Government Ethics follows:]

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

JL 21 1986

Honorable Robert Packwood
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by William F. Nelson, who has been nominated by President Reagan for the position of Chief Counsel for the Internal Revenue Service.

We have reviewed the report and have also obtained advice from the Department of the Treasury concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Nelson is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin
Director

Enclosure

The CHAIRMAN. Mr. Nelson.

STATEMENT OF WILLIAM F. NELSON, NOMINEE TO BE CHIEF COUNSEL OF THE INTERNAL REVENUE SERVICE

Mr. NELSON. Senator, I have no prepared remarks, other than to say to my Senator as he exits that I appreciate him coming by to introduce me. I am greatly honored to be nominated, and I am here to answer such questions as I can, recognizing that you have managed to work me in in what is an extraordinarily busy and substantive schedule.

The CHAIRMAN. As I told you earlier, in reviewing your confidential FBI report, I was intrigued not only by the unusual statements of competence, but by the number of people who said that you were a personable fellow and a delight to have around.

Mr. NELSON. I should like to know who that is. I think I may wait several years to file the FOIA request to find out.

The CHAIRMAN. It appears more than once among people that have dealt with you.

Mr. NELSON. I have a nice wife who has worked on me religiously for 17 years.

The CHAIRMAN. Is she here today?

Mr. NELSON. No, she is not.

The CHAIRMAN. All right. I hope to bring up your nomination and try to send it out this afternoon. Let me ask you this, as long as we have some time. You have had a chance, obviously, to look over the House and Senate tax reform bill.

Mr. NELSON. Yes, sir.

The CHAIRMAN. The Senate bill probably to a lesser degree than the House bill because you have had less time to review it. As you are eventually going to be doing some advisory opinions, what do you think of the concept in the Senate bill where we have simply attempted to get rid of passive losses and say that henceforth, we hope, investments will be made on the basis of an economic return rather than a tax loss return?

Mr. NELSON. I think, as a result, you will see a—I won't say elimination of tax shelters, because I think as long as losses are there, people are going to try to figure out how to make use of them—but you certainly will see a reduction, a significant reduction, of truly passive individuals trying to zero out their Federal tax liability.

It is quite clear that the system was over-incentivized, and then some people began to take advantage of that and take outrageous positions. I think that will not happen, partly because you have set up the passive loss rules. You have a sort of a gauntlet ready for them to run. They have got to get through the investment interest limitations, then the passive loss rules, then the alternative minimum tax rules.

I think it is going to be very difficult for people not suffering economic losses in business activity to shelter active business income.

The CHAIRMAN. You make our bill sound like the obstacle course at Fort Bragg.

Mr. NELSON. I got the impression that was the purpose.

The CHAIRMAN. It was. It very definitely was the purpose, and you are right. There are still some losses left in it—some in oil and gas, clearly in municipal bonds, where you can still reduce your taxable income to zero if you choose. But the bulk of them, I think, are gone.

Mr. NELSON. I don't think there is much question about that. I think that you will see some people trying their best to generate passive activity income so as to use whatever passive activity losses that are left on the table; but even now in the market, you are seeing much more economically based, lower-leveraged transactions come into the market, prices much more nearly, it seems to me, reflecting economic value.

The CHAIRMAN. Let me ask you a philosophic question that we have still left unresolved. As we went through the hearings last summer on the tax reform bills, it was very clear we were trying to direct all kinds of economic and social activity in this country, through the use of tax incentives. We have tried to get out of many of those.

What do you think the position ought to be, however, in terms of directing activity if you are reasonably convinced that the marketplace won't produce it and you need it? Health coverage being a good example?

Mr. NELSON. That is a very difficult question for me to answer. I am not an economist, but my experience is that tax incentives do work. Sometimes they work too well, such as the safe harbor leasing provisions in the 1981 act. Sometimes I get the feeling that we would like to be able to apply an "I know it when I see it standard"; and it is very difficult to draft a statute that way.

I think most tax lawyers would prefer a system raising revenue, but I think that it is the prerogative of the Congress of the United States to use the tax system for whatever ends it chooses to use them, including incentivizing economic activity, which it clearly can do when it——

The CHAIRMAN. I was thinking of the whole area of employee benefits: health insurance, life insurance, day care, and cafeteria plans. We have said we prefer a system where the employer provides the health coverage to one where the Federal Government attempts to provide it directly. Then we will tax you, collect the money, and do it.

Now, the presumption of that question is, had we not had employers provide it, we might have had some kind of a national health service, like Britain or Sweden that, indeed, the marketplace in and of itself wouldn't have provided. As a result, the employees in this country wouldn't have bought the insurance or provided it on their own; and you would then have the demand for national health insurance.

Given the alternative of a tax incentive or appropriated programs, if those are your only choices, which would you prefer?

Mr. NELSON. I have a hard time answering that question, Senator. My experience is purely anecdotal. I suspect that, to the extent the Government wants to subsidize economic activity, usually the most difficult problem is to see that that subsidy is equally spread among people and is not tax right sensitive, so that we don't overincentivize certain people. I think in the employee benefit health

care situation, I suspect that benefits are in fact more liberal from employers than they would be if they were includable or not deductible, as the case may be.

The CHAIRMAN. But what difference does it make to the employer; whether the employer pays you wages or fringe benefits, it is still deductible by the employer.

Mr. NELSON. It is a question of includability, but in any case, the Government is clearly subsidizing, effectively writing a check to those who do what it requires or wants people to do. I really don't have a basis for responding to what I think the market would do if those provisions were repealed. Common sense tells me that they would not be increased, and indeed, they might be cut back; but I really just don't have the basis for being more specific than that.

The CHAIRMAN. Which brings us then to the argument of charitable deductions. Forgetting for the moment the problem of the first amendment, if the Government tried to subsidize churches directly, are we better off with a straight-out Government appropriated support of what we would call 501C(3) and other types of institutions? Or are we better off to try and support them through charitable contributions that are deductible?

Mr. NELSON. Well, this is Will Nelson talking, private citizen. I do think, quite obviously, that the deductibility of charitable contributions causes them to be under the current system twice what they would otherwise be. And I guess I would have a great deal of difficulty with the Government making direct choice subsidies to certain 501C(3) organizations, again leaving aside churches where there is an obvious first amendment problem. And maybe the same analysis would apply in the health care situation.

Let people pick what they want—sort of voucher system indirectly.

The CHAIRMAN. That is recommended by a number of people. Give them a certain dollar amount and something like rent subsidies or tuition tax credits or a variety of other ideas that are suggested.

Mr. Nelson, I have no more questions. I am quite sure that you will be approved by this committee expeditiously.

You really do have an extraordinary record. And I will say again: Unless you just want your ears to burn without seeing it, you ought to ask the FBI to see what all of your friends said about you. There is not a bad thing in the report.

Mr. NELSON. I very carefully selected the people I directed the FBI to see. [Laughter.]

Mr. NELSON. Thank you very much.

The CHAIRMAN. You bet. It is good to have you with us.

[Whereupon, at 2:06 p.m., the hearing was adjourned.]

63-005 (16)